U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERDELL E. HAMER and U.S. POSTAL SERVICE,
POST OFFICE, Louisville, KY

*Docket No. 00-601; Submitted on the Record;*
*Issued May 4, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant developed reflex sympathetic dystrophy (RSD), causally related to her accepted employment injury.

On April 15, 1995 appellant, then a 39-year-old clerk, bumped her right elbow as she was lifting tubs of mail out of a carrier. She did not stop work and did not seek medical treatment.

On May 2, 1996 appellant filed a claim alleging that following the April 15, 1995 incident her right elbow condition got worse over time. On April 29, 1996 she was diagnosed with tendinitis, epicondylitis and bursitis of the right elbow.

By report dated May 17, 1996, Dr. Bruce A. MacDougal, a Board-certified hand surgeon, diagnosed "post-traumatic lateral epicondylitis with contusion, resolved" and recommended continued light duty with strengthening exercises and a steroid injection. Dr. MacDougal reported that appellant had negative quadrant compression, distraction, drop arm, impingement, thoracic outlet screen, acruciate ligament, Phalen's/McKinnon's, Tinel's, Finkelstein's and Klunk's tests bilaterally and a negative tennis elbow test on the right.

On July 11, 1996 the Office of Workers' Compensation Programs accepted that appellant sustained epicondylitis of the right elbow.

In a July 19, 1996 functional capacity evaluation (FCE), the results of several psychometric questionnaires was noted as follows: "[Appellant] scored high on four out of eight criteria scored giving her a rather high pain profile. This in conjunction with other clinical signs indicate the presence of overt symptom magnification."

On August 21, 1996 appellant claimed that on August 16, 1996 she was experiencing such intense pain that she had to go to the emergency room. She filled out a Form CA-2a claim for recurrence of disability; however, she did not identify a specific date of recurrence and in an attachment she stated that "this injury is not [a] recurrence, the state of the injury (pain)

increased to the point that any movement was causing intense pain in my right elbow due to lifting, pulling, twisting and turning of my hand and arm on my job over the period of time." Appellant claimed that "[t]he pain that I am now and have been experiencing for the past six months are know (sic) comparison to the initial day of injury and is considerable (sic) more intense."

By report dated September 5, 1996, Dr. Blaise E. Ferraraccio, a Board-certified neurologist, noted that electromyogram (EMG) and nerve conduction testing demonstrated a mild delay in the median sensory latency across the right wrist and mild slowing of ulnar conduction across the elbow."

A September 13, 1996 medical progress note identified possible RSD of the right forearm status post right stellate ganglion block, noted relief of pain for two days, but noted that after that the pain returned to the regular level.[1]

By report dated August 9, 1996, Dr. MacDougal noted that the FCE demonstrated "ability to perform below sedentary command but with overt symptom magnification and functional findings showed marked invalidity. Invalid testing with overt symptom magnification, upper extremity pain. Failure to improve with exercise."

On August 27, 1996 possible RSD was again noted.

By decision dated November 20, 1996, the Office denied appellant's recurrence claim finding that the evidence of record failed to establish that appellant's RSD was causally related to her accepted right elbow epicondylitis.

By note dated December 10, 1996, Dr. Ted Shin, a Board-certified anesthesiologist, indicated that appellant had been a pain clinic patient for three to four months and noted:

> "The disease which she suffers from is called RSD and it is a very painful and chronic condition. Unfortunately, the disease is very difficult to treat and can lead to a life time of pain and disability."

A March 11, 1997 psychological report from Robert R. Berberich, a clinical psychologist, noted that the pain apperception test suggested that appellant had a "very low pain threshold. This means that she had a tendency to feel pain much sooner than another person might feel pain. This could lead to an intensification of the subjective experience of pain, as well as to its psychologically disorganizing effects."

By decision dated May 19, 1997, the Office denied appellant's request for modification finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Drs. Berberich and Shin both failed to provide opinions based upon current objective findings that supported a relationship between her RSD and the original injury.

[1] RSD is defined as an excessive or abnormal response of the sympathetic nervous system to injury of the shoulder and arm, rarely the leg. It consists of protracted pain in association with cyanosis or pallor, swelling, coldness, pain on passive motion and osteoporosis. *Principles of Neurology*, Fourth Edition (1989) page 176.

By letter dated May 22, 1997, appellant, through her representative, requested reconsideration of the November 20, 1996 decision, and she enclosed duplicate copies of the March 11, 1997 report from Dr. Berberich and the December 10, 1996 note from Dr. Shin.

By decision dated June 13, 1997, the Office denied appellant's request for further review of her case on its merits under 5 U.S.C. § 8128(a) finding that the evidence submitted was repetitious of that previously considered for the May 19, 1997 decision.

By letter dated August 19, 1997, appellant, through her representative, requested reconsideration of the June 13, 1997 decision. In support of the request, appellant submitted an August 6, 1997 Form CA-16 report from Dr. William H. DeVries, a Board-certified orthopedic surgeon, which noted as history that appellant struck her right elbow lifting magazines, noted a diagnosis of RSD and checked "yes" to the question of whether an employment activity caused or aggravated appellant's condition and stated "By report, the present condition was caused by trauma while working." He recommended light duty. Also submitted was an August 6, 1997 Form CA-17 duty status report which contained the history of right elbow injury and noted as a diagnosis "[RSD]." Dr. DeVries indicated that appellant could perform light-duty part-time work.

In a January 28, 1998 medical progress note, Dr. Shin diagnosed RSD and recommended a right stellate ganglion block for appellant. A March 19, 1998 neurosurgical consultation indicated that the examining physician was "concerned she may have [illegible] radial nerve compression rather than RSD."

By decision dated April 8, 1998, the Office denied modification of the November 20, 1996 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that there was no evidence of record which provided a rationalized medical opinion explaining how and why appellant's current RSD was the result of the original April 15, 1995 incident or of her right elbow epicondylitis.

By letter dated July 6, 1998, appellant requested reconsideration of the April 8, 1998 decision and in support she resubmitted the August 6, 1997 form reports from Dr. DeVries.

On August 17, 1998 appellant requested reconsideration, stating that she disagreed with the Office findings and that there had never been a recurrence but that she had had disability from the date of injury and arguing that the medical evidence of record indicated that RSD was caused by trauma consistent with her injury. She argued that her medical treatment had been continuous for three years which proved the causal connection.

By decision dated September 18, 1998, the Office denied modification of the April 8, 1998 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that no medical evidence had been submitted that provided a rationalized medical opinion demonstrating that her current RSD was causally related to the April 15, 1995 work injury.

By letter dated November 5, 1998, appellant requested reconsideration of the September 18, 1998 decision.

In support of her request, appellant submitted a September 9, 1998 physical therapy evaluation in which it was noted that of all of appellant's right upper extremity deficits and complaints, including symptom magnification, pain and hypersensitivity were the only symptoms, which were associated with RSD. A second functional capacity evaluation was recommended.

Also submitted was a report dated October 28, 1998 from Dr. Shin which noted that appellant's "initial diagnosis of epicondylitis on her first evaluation may have been correct, but shortly after her evaluation, she started to manifest classical symptoms of RSD." Dr. Shin opined that appellant did "indeed have a present disability most likely cause[d] by her reported accident at work."

By decision dated February 6, 1999, the Office denied modification of the September 18, 1998 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that Dr. Shin's report was speculative and unrationalized, and that there was no medical evidence of record that provided a rationalized medical opinion demonstrating that her current RSD was causally related to the April 15, 1995 work injury.

By letters dated April 5 and 12, 1999, appellant requested reconsideration of the February 6, 1999 decision. In support appellant submitted a statement from the postmaster indicating that he had been advised that the incident had occurred as alleged, some surgery paperwork, disability certificates, a March 30, 1999 Form CA-16 listing appellant's diagnosis as RSD and containing a "yes" checkmark regarding causal relation with an employment activity, operative reports and a March 17, 1999 medical treatment progress note which stated that her "symptoms started [in] August 1995 when [she] bumped [her] elbow during work."

A February 24, 1999 report from Dr. Paul M. Taylor, a Board-certified family practitioner, diagnosed "Reflex sympathetic dystrophy, status postop[erative] sympathectomy" and noted "Because of this type of history, it is very reasonable to assume that a seemingly minor injury has caused such distress, mainly RSD.

Two Forms CA-16 dated March 19 and 29, 1999 indicated diagnoses of "Complex Regional Pain Syndrome II" and "RSD, status postop[erative] Sympathectomy," respectively and contained a checkmark "yes" to the question of whether the condition was caused or aggravated by an employment activity.

Also submitted was a March 30, 1999 statement from Dr. Harry C. Weiser, a Board-certified neurosurgeon, which noted "Due to the injury of her right elbow the pain and suffering that [she] is experiencing is caused by RSD."

In an April 2, 1999 neurosurgical consultation report, Dr. Joseph P. Coladonato, a Board-certified neurosurgeon, reviewed appellant's treatment history, noted that appellant had been out of work since her ulnar nerve transposition on June 16, 1988 which did not give her relief but caused her to have increased pain, and opined that the fact that appellant had had no relief with stellate ganglion blocks and with the sympathetectomy carried a poor prognosis for relief with spinal cord stimulation.

Appellant additionally submitted reports which provided as history her own statement of causal relation, but which did not medically discuss the pathophysiology of causal relation and statements from her husband and coworkers.

By decision dated June 18, 1999, the Office denied modification of the February 6, 1999 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that none of the medical reports submitted contained an opinion with rationale that established that appellant's RSD was causally related to her right epicondylitis or to the April 15, 1995 employment incident.

By letter dated August 23, 1999, appellant requested reconsideration and argued that her treatment had been continuous since April 16, 1996.

A May 12, 1999 report from Dr. Cyrus E. Bakhit, a Board-certified anesthesiologist, noted that her RSD diagnosis was given more credence by the fact that she had positive response to dorsal column stimulation.

In a comprehensive evaluation dated April 28, 1999, Dr. Bakhit reviewed appellant's history of right elbow contusion, her subsequent exacerbation of pain, various treatments, her present symptomatology and opined that with the time passed since the initial injury and the fact that she had a thoracic sympathectomy, "her condition has technically become sympathetically independent at that point."

Other medical reports merely noted the diagnosis of RSD.

In a June 24, 1999 report, Dr. Taylor noted that appellant was seen April 16, 1996 when she had a relatively insignificant injury to her right upper extremity, that she had poor response to treatment and persistent pain, that in 1999 she had several stellate ganglion blocks, a right ulnar nerve transposition and a right sympathectomy, and that her diagnosis was of regional pain syndrome or RSD, and that she still continued to have persistent pain in the arm and shoulder down to the hand. He noted that "regardless of the diagnosis in this individual and based on the functional capacity evaluation in 1996, her history of that has been that of a progressively downhill course in regard to her right upper extremity."

An August 6, 1999 report from Dr. Bakhit stated that there was no doubt that appellant was suffering from a classical form of complex regional pain syndrome, otherwise known as RSD. He noted: "Insofar as the causation and relationship. It is clear that her present pain condition is directly related to her work-related injury that she sustained on April 15, 1995."

By decision dated October 26, 1999, the Office denied modification of the June 18, 1999 decision finding that the evidence submitted was insufficient to warrant modification. The Board found that the medical evidence submitted was based on an inaccurate history of the case and was therefore of diminished value.

The Board finds that this case is not in posture for decision.

In the instant case, appellant has submitted some evidence supportive of her claim. On August 6, 1997 Dr. DeVries noted appellant's history of striking her right elbow lifting

magazines, diagnosed RSD and opined by checking "yes" that it was causally related to an employment activity and he noted "By report, the present condition was caused by trauma while working.

On October 28, 1998 Dr. Shin noted that appellant's initial diagnosis of epicondylitis may have been correct but that after evaluation she started to manifest symptoms of RSD and he opined that appellant "did indeed have a present disability most likely cause[d] by her reported accident at work."

On February 24, 1999 Dr. Taylor diagnosed RSD and noted that because of this type of history, it is very reasonable to assume that a seemingly minor injury has caused such distress, mainly RSD.

On March 30, 1999 Dr. Weiser opined "Due to the injury of her right elbow the pain and suffering that [she] is experiencing is caused by [RSD]."

On August 6, 1999 Dr. Bakhit opined that appellant was suffering from a classical form of RSD and he noted "Insofar as the causation and relationship, it is clear that her present pain condition is directly related to her work-related injury that she sustained on April 15, 1995.

Multiple form reports also noted a diagnosis of RSD and checked "yes" to the question of whether it was related to an employment activity. A March 17, 1999 medical progress note also noted that appellant's symptoms started in August 1995 when she bumped her elbow during work.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[2] This holds true in consequential injury claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between her allegedly disabling complaints and periods of disability and her original traumatic injuries, that is sufficient to require further development of the case record by the Office.[3] Additionally, there is no opposing medical evidence in the record.

Therefore the case must be remanded for development of a new statement of accepted facts and questions to be addressed, to be followed by a referral to an appropriate neurosurgical specialist for a reasoned opinion as to how and why appellant developed RSD, causally related to her April 15, 1995 employment incident or to her accepted injury of epicondylitis.

[2] *William J. Cantrell*, 34 ECAB 1223 (1983).

[3] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Consequently, the decisions of the Office of Workers' Compensation Programs October 26, June 18 and February 6, 1999 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
May 4, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member